

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KATHLEEN BROWN,

Civil Action No. 03-224

Plaintiff,

v.

COST COMPANY,

Defendant.

**PLAINTIFF'S MOTION TO VACATE FOR MOOTNESS ORDER DATED OCTOBER
31, 2005 GRANTING PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME IN
WHICH TO FILE BRIEF IN SUPPORT OF AMENDED MOTION FOR NEW TRIAL
PER F.R.C.P. 59**

Plaintiff, Kathleen Brown, moves this Honorable Court to vacate for mootness its October 31, 2005 Order granting Plaintiff's motion (Document 57) for an enlargement of fifteen days in which to file her brief in support of her amended motion for new trial per F.R.C.P. 59, for the reasons set forth below.

1. By Order dated August 10, 2005, this Court directed the plaintiff to file her brief in support of her amended motion for new trial per F.R.C.P. within fourteen days of the filing of the trial transcript.
2. By order dated October 31, 2005, this Court granted Plaintiff's motion (Document 57) for an enlargement of fifteen (15) days in which to file her brief in support of her amended motion for new trial per F.R.C.P. 59. The Court issued its order only hours after Plaintiff filed her motion.

3. Plaintiff sought the extension of time based on undersigned counsel's good-faith, albeit erroneous, belief that the entire trial transcript had been produced and filed with the Court on October 17, 2005. In fact, only a partial transcript was filed with the Clerk's office on October 17th, viz., the trial transcript for days 3, 4, & 5. The partial nature of the transcript filing on October 17th was not known to undersigned counsel when he prepared and filed Plaintiff's motion, because he was at trial before Judge Conti in the case of **Norris v. UPMC**, (02-49, WDPa) from October 17 through October 31, 2005, and did not have an opportunity to inspect the transcript until after that trial concluded, the day after the Court issued its October 31st Order.
4. Plaintiff has ordered excerpts of the as-yet uncompleted transcript from Court Reporter Ronald Bench. Last week, and then again earlier today, Mr. Bench notified undersigned counsel that he would not complete work and file his portion of the transcript before November 17, 2005.
5. Accordingly, pursuant to the Court's August 10, 2005 Order, Plaintiff's Brief is not due until, at the earliest, fourteen days from November 17, 2005, or December 1, 2005.

6. Consequently, Plaintiff's motion to enlarge the deadline for the filing of Plaintiff's brief in support of her amended motion for new trial per F.R.C.P. 59 is moot, as is the Court's October 31st Order granting same.
7. Plaintiff therefore requests that the Court vacate for mootness its October 31, 2005 Order.

WHEREFORE, Plaintiff respectfully requests that the Court vacate for mootness its October 31, 2005 Order granting the Plaintiff's motion to enlarge by fifteen (15) days the deadline for the filing of her brief in support of her amended motion for new trial per F.R.C.P. 59.

Respectfully submitted,

/s/ Richard S. Matesic

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CERTIFICATE OF SERVICE

I, Richard S. Matesic, hereby certify that on November 16, 2005, I electronically filed the foregoing Plaintiff's Motion to vacate for mootness the Court's October 31, 2005 Order with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

Michael J. Pawk, Esquire
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The Morgan Center Building
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Butler, PA 16001
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Date: November 16, 2005

/s/ Richard S. Matesic
Richard S. Matesic